

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

Track Three Cases

MDL 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

Plaintiffs Lake and Trumbull Counties' Reply Brief in Support of its Motion for Order Seeking Defendants CVS, Walgreens, and Walmart's Compliance with the Court's Injunctive Order Nunc Pro Tunc; Plaintiffs' Motion to Permit Disclosure of Defendants' Documents with Members of the Plaintiffs' Executive Committee

The Court should grant Plaintiffs' motion. Walgreens claims it does not need a written policy to confirm its compliance that its system allows unfettered and continuous (for 15 years) accessibility to red flag resolution and refusal to fill documentation. CVS claims to differentiate between accessibility and archival of the documentation and states that for some accessibility is 2 years and for others it is 5 years before transfer to an archive. Neither complies with the Injunctive Order.

While the written policy Walmart submitted complies with the Injunctive Order, Walmart has failed to produce the POMs plaintiffs have requested. The POMs are referenced in the policy and require the Court's and plaintiffs' review.

The written policy Walmart submitted applies during the term of the Order – 15 years. The document was previously produced by Walmart to the court. Plaintiff will provide a copy of the document by email to the court rather than attach it to this brief. It states:

The pharmacist must document the resolution of all Red Flags and Refusals-to-Fill identified by the pharmacist. Pharmacists must provide clear description(s) of the Red Flag(s) identified and either (a) how the Red Flag was resolved before the medication was dispensed, or (b) the reasons why the pharmacist refused to dispense the medication. This documentation will provide sufficient details in order that any subsequent reviewer will have a clear understanding of how each Red Flag was resolved for any review or inquiry for auditing or regulatory purposes. **Documentation will also be available and easily accessible to all Walmart pharmacists and maintained for the duration of the Order.** (emphasis added).

This policy does what plaintiffs submit the Order requires.

However, as noted above, Walmart should produce the POMs plaintiffs have requested. They are referenced in the policy and require the Court's and plaintiffs' review.

Plaintiffs properly complied with the Order's enforcement provisions as set forth in the email exchanges between the parties provided previously to the court. This dispute involves the initial foundational compliance provisions of the Order. It is clear that there is a disagreement; it is clear what the disagreement is; and that any further communications between the parties are fruitless.

Defendants have not shown any good cause or any real reason why plaintiffs should be prohibited from disseminating these policies to PEC members who have signed the applicable protective order. These documents are relevant to the ongoing litigation which Third Party Payors and Private hospitals have against these defendants. The defendants have not set forth any argument as to why these documents are confidential or how their dissemination to this limited group will cause any harm.

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2023, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF system.

/s/Peter H. Weinberger
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